IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 785 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant
Versus
ROHITKUMARA GOPALDAS - Respondent

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Appearance :
MR. M.A. PATEL, LD. APP for Appellant:
MR. H.N. JOSHI, LD. COUNSEL FOR M/S THAKKAR ASSOC. for Respondent :

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 23/11/2006

ORAL JUDGMENT

1. The appellant State of Gujarat has preferred this appeal under section 378 of the Criminal

Procedure Code, 1973 (herein after referred to as the “Code” for brevity, challenging the order of acquittal passed by learned JMFC, Khambhalia, dated 26/5/1995 in Criminal Case No. 891 of 1991 acquitting the respondent / original accused of the charge of commission of offences punishable under Section 7 and 16 of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as “PFA Act”).

2. The case of the appellant in short is that the original complainant Food Inspector, while serving in the Khambhaliya Nagarpalika, visited the shop of the accused on 11/4/1991. At that time the accused was present and selling the goods lying in his shop. The accused seems to have stored oil tins for selling in his godown. The complainant was accompanied by witness Shri. Bhimji Lalji Goriya and Babulal Mathurdas Jusab Umar. The complainant in fact collected two samples of groundnut oil, one from the open tin and one from the sealed tin. The present appeal is arising out of the sample which was numbered as 1/91. The another sample was numbered as 2/91. After making payment of Rs.15=00 for purchasing the sample food article and obtaining receipt thereof, the said sample of food article was divided into three equal parts and collected in cleaned glass bottles. The cleanliness of the glass bottles were shown to the witnesses present on the scene of collection of sample.

The sample food article in question in the present case was thereafter sealed as required under the law and the necessary signature of all the concerned were obtained.

It deserve to be noted at this stage that, in fact this complainant had collected two samples, namely sample bearing no. 1/91 and sample bearing no. 2/91 from this very accused and in respect of both the samples separate criminal complaints came to be filed being Criminal Case No. 891 of 1991 which was in respect of sample bearing no. 1/91 and Criminal Case No. 1009 of 1995 which was in respect of sample No. 2/91. The trial court in separate judgments dated 26/5/1995 acquitted the accused in both the cases and therefore two appeals came to be filed. The appeal being Criminal Appeal No. 765 of 1996 contained challenge to the judgment & order of acquittal passed by the trial court in respect of sample bearing no. 2/91. This Court has dismissed the same on account of prosecution's failure in proving its case beyond doubt (Coram: S.R. Brahmbhatt, J) vide judgment & order dated 6/9/2005.

The present appeal being Criminal Appeal No. 785 of 1996 had not been listed at that time, and therefore, it remained pending which is being disposed of by the present judgment.

3. Few facts in respect of sample no. 2/91 forming part of criminal Case No. 1009/95 deserve to be put up so as to have clear picture of the obtaining circumstances. That, on 12/4/1991 one portion of sample food article namely 1/91 and 2/91 were sent to the Public Analyst for analysis. It may be mentioned here that the Public Analyst did not receive the sample of food article bearing sample no. 2/91. Instead of that, he had received the sample bearing No. 1/91 in duplicate, meaning thereby, through mistake or whatever reason, the sample food article bearing sample No. 2/91 had not reached the Public Analyst in the first instance. The Public Analyst vide his letter dated 4/5/1991 informed that he had received only sample bearing no. 1/91 in duplicate and requested vide his letter dated 8/5/1991 to the Food Inspector to send the sample bearing No. 2/91 as only the memorandum was received but sample received along with memorandum was bearing number 1/91. The Food Inspector vide letter dated 15/5/1991 informed the Local Health Authority, Rajkot that appropriate action be taken for sending one part of the remaining sample No. 2/1991 to the Public Analyst. It appears form the record that vide letter dated 4/6/1991 the Local Health Authority received a request from the Public Analyst, Bhuj for sending the sample of food article bearing number 2/91. The food inspector under his letter dated 6/6/1991 sent copy of the

letter of Public Analyst to Local Health Authority, Rajkot. The Public Analyst once again sent request letter on 15th June, 1991 to the Local Health Authority, Rajkot, requesting for the sample of the sample No. 2/91. The Public Analyst sent his report under his letter dated 19/7/1991 intimating that the sample food article was adulterated as it was not in conformity with the standards laid down in the Food Adulteration Rules, 1955 (herein after referred to as the 'Rules' for short). The Food Inspector submitted relevant document along with report of the Public Analyst to the Local Health Authority for obtaining appropriate sanction for lodging prosecution. The Local Health Authority has granted sanction vide letter dated 12/8/1991. The complaint came to be lodged on 20/8/1991 in the court of learned JMFC, Jamkhambhaliya. After lodging complaint, the Local Health Authority issued notice on 23/8/1991 under Section 13 (2) of the Act. As it appears from the record, that notice was received by the accused's wife. The complainant was examined and the plea of denial was recorded and the matter had proceeded further. The trial Court has framed two points for determination, namely (1) whether the prosecution proves that accused has committed breach of the provisions of Food Adulteration Act on account of making adulteration in the ground nut oil ? (ii) What order? The first point is answered in negative

and the second point is answered as per order. After discussing the evidence on record, the learned trial court came to the conclusion that the accused deserve to be acquitted and accordingly he was acquitted vide order dated 26/5/1995. The said impugned order was under challenge in the acquittal appeal.

4. Heard Shir. M.A. Patel, learned APP for the appellant and Shri. H.N. Joshi, learned counsel for the respondent/ original accused.

5. Shri. Patel, learned APP has submitted that the order of acquittal is erroneous and is not tenable in eye of law and therefore, same deserves to be quashed and set aside. Shri. Patel has also submitted that the trial court has erroneously held that there was breach of Rule 18 of the Rules. From the material on record, it could be established that there was no breach of Rule 18 of the Rules. The finding of the trial court is erroneous and therefore, the impugned judgment is to be quashed and set aside and the appeal deserve to be allowed.

6. Shri. Joshi, learned counsel for the respondent has submitted that this being an acquittal appeal, this Court may not disturb the finding of acquittal unless and until it is established by the prosecution and the appellant that the impugned judgment is so perverse, so as to

result into miscarriage of justice. In the instant case, it can well be said that on the basis of the evidence adduced on record, the prosecution has not proved its case beyond reasonable doubt. The infirmity it the case of the prosecution itself would go to show that the order of acquittal does not call for any interference in the present appeal. Shri. Joshi has submitted that breach of Rule 18 can well be established from the record and proceedings. Shri. Joshi has submitted that the Apex Court in case of STATE OF MAHARASHTRA Vs. RAJKARAN, reported in 1988 (1) Prevention of Food Adulteration Case, pg. 156 has observed that, wherever there is non compliance with Rule 17 and 18 of the Rules, the prosecution case stands vitiated. Shri. Joshi has also relied upon a decision of this Court in case of STATE OF GUJARAT Vs. SHANTABEN, WIFE OF BHOI DHULABHAI, reported in AIR 1964 (Gujarat) pg. 136 on the aspect that Rule 18 being mandatory, same is to be followed and breach thereof or non compliance thereof would render the prosecution case vitiated. Shri. Joshi has also relied upon an unreported judgment of this Court in case of CRIMINAL APPEAL NO. 33 OF 1993 (Coram: D.P. Buch, J) delivered on 18/12/2001 showing that sending of envelop as envisaged in the rule in a sealed condition is mandatory.

7. Therefore, the non compliance in any manner with

Rule 17 and 18 would result into vitiating case of the prosecution. In the instant case, Shri. Joshi has submitted that, requirement of sending the memorandum in separate cover in sealed packets is not established as it is nowhere stated even by the complaint Food Inspector in his testimony that the said rule was complied with by sending it in sealed covers. The omission on his part in mentioning 'sealed cover' can not be therefore lightly taken and evidence to that effect was required to be brought on record so as to establish the due compliance with provision of rule 18.

8. This appeal deserves to be disposed of only on the ground that the prosecution has failed in establishing its case beyond reasonable doubt to bring home charge of commission of offence under section 16 of the Act on the part of the accused. The testimony of the Food Inspector does not clearly disclose anywhere that the documents referred to by him were sent in a “Sealed Cover”. This could be fortified by having a look at the details of sample exhibit-34, wherein also it is noticed that the Public Analyst has not stated expressly as to whether the memorandum with specimen seal impression had been received either in sealed packet or otherwise. The print form contains “sealed / “unsealed packet” and it was expected of the Public Analyst to score off the word which was

not applicable. In the instant case as it is seen from exhibit-34 the Public Analyst has not scored off either 'unsealed or sealed' words and therefore, it can rightly be said that the prosecution has not established its case beyond doubt in respect of due compliance with the Rules.

9. It also deserves to be noted that the complainant has at many places faltered in coming out with consistent version. In the first instance the requirement of collecting two samples from same vendor of the same sample groundnut oil remains to be explained. The bungling on the part of Food Inspector in sending sample no. 1/91 to the Public Analyst and omitting to send sample No. 2/91 as it is noticed in earlier case by this Court in Criminal Appeal No. 765 of 1996, and the version of the Food Inspector that he had not committed such mistake which is contrary to record also deals serious blow to the very credibility of this witness. In view of these, in the facts & circumstances of this case, this Court is of the considered view that the order of acquittal impugned in the present appeal is just and proper and it can well be said that the prosecution has failed in establishing its case beyond reasonable doubt so as to bring home guilt on the part of the accused.

10. In the result, as the judgment & order of acquittal impugned in the present appeal does not suffer from any infirmity, and as the appellant has failed in establishing that the findings of the trial court is perverse and has resulted in to miscarriage of justice, it does not call for any interference. The appeal, therefore, deserve to be dismissed and is accordingly dismissed.

[S.R. BRAHMBHATT, J]

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